

in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists.

The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

#### § 89.1007 Warranty provisions.

(a) The manufacturer of each nonroad engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period (as determined under § 89.104).

(b) In the case of a nonroad engine part, the manufacturer or rebuilder of the part may certify according to § 85.2112 that use of the part will not result in a failure of the engine to comply with emission standards promulgated in this part.

(c) For the purposes of this section, the owner of any nonroad engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and service, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices related to emission control (but not designed for emission control) under the terms of the last sentence of section 207(a)(3) of the Act, unless such part, item, or device is covered by any warranty not mandated by this Act.

[59 FR 31335, June 17, 1994, as amended at 63 FR 57023, Oct. 23, 1998]

#### § 89.1008 In-use compliance provisions.

(a) Effective with respect to nonroad vehicles, equipment, and engines manufactured during model years 1996 and after:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their recall period (as defined under § 89.104(b)), the Administrator shall immediately notify

the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer shall comply in all respects with the requirements of subpart G of this part.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as required in subparts H and I of this part.

(3)(i) The manufacturer shall furnish with each new nonroad engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 89.109. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any nonroad engine repair establishment or individual using any nonroad engine part which has been certified as provided in § 89.1007(a).

(ii) The instruction under paragraph (3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service

(other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Subject instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer, or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent nonroad engine repair facilities with which such manufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine, and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 89.110.

(b) The manufacturer bears all cost obligation a dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

## Environmental Protection Agency

Pt. 90

(d) Any inspection of a nonroad engine for purposes of paragraph (a)(1) of this section, after its sale to the ultimate purchaser, is to be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any state or local inspection program.

### PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

#### Subpart A—General

##### Sec.

- 90.1 Applicability.
- 90.2 Effective dates.
- 90.3 Definitions.
- 90.4 Treatment of confidential information.
- 90.5 Acronyms and abbreviations.
- 90.6 Table and figure numbering; position.
- 90.7 Reference materials.

#### Subpart B—Emission Standards and Certification Provisions

- 90.101 Applicability.
- 90.102 Definitions.
- 90.103 Exhaust emission standards.
- 90.104 Compliance with emission standards.
- 90.105 Useful life periods for Phase 2 engines.
- 90.106 Certificate of conformity.
- 90.107 Application for certification.
- 90.108 Certification.
- 90.109 Requirement of certification—closed crankcase.
- 90.110 Requirement of certification—prohibited controls.
- 90.111 Requirement of certification—prohibition of defeat devices.
- 90.112 Requirement of certification—adjustable parameters.
- 90.113 In-use testing program for Phase 1 engines.
- 90.114 Requirement of certification—engine information label.
- 90.115 Requirement of certification—supplying production engines upon request.
- 90.116 Certification procedure—determining engine displacement, engine class, and engine families.
- 90.117 Certification procedure—test engine selection.
- 90.118 Certification procedure—service accumulation and usage of deterioration factors.
- 90.119 Certification procedure—testing.
- 90.120 Certification procedure—use of special test procedures.
- 90.121 Certification procedure—record-keeping.

- 90.122 Amending the application and certificate of conformity.
- 90.123 Denial, revocation of certificate of conformity.
- 90.124 Request for hearing.
- 90.125 Hearing procedures.
- 90.126 Right of entry and access.

#### Subpart C—Certification Averaging, Banking, and Trading Provisions

- 90.201 Applicability.
- 90.202 Definitions.
- 90.203 General provisions.
- 90.204 Averaging.
- 90.205 Banking.
- 90.206 Trading.
- 90.207 Credit calculation and manufacturer compliance with emission standards.
- 90.208 Certification.
- 90.209 Maintenance of records.
- 90.210 End-of-year and final reports.
- 90.211 Request for hearing.

#### Subpart D—Emission Test Equipment Provisions

- 90.301 Applicability.
- 90.302 Definitions.
- 90.303 Symbols, acronyms, abbreviations.
- 90.304 Test equipment overview.
- 90.305 Dynamometer specifications and calibration accuracy.
- 90.306 Dynamometer torque cell calibration.
- 90.307 Engine cooling system.
- 90.308 Lubricating oil and test fuels.
- 90.309 Engine intake air temperature measurement.
- 90.310 Engine intake air humidity measurement.
- 90.311 Test conditions.
- 90.312 Analytical gases.
- 90.313 Analyzers required.
- 90.314 Analyzer accuracy and specifications.
- 90.315 Analyzer initial calibration.
- 90.316 Hydrocarbon analyzer calibration.
- 90.317 Carbon monoxide analyzer calibration.
- 90.318 Oxides of nitrogen analyzer calibration.
- 90.319 NO<sub>x</sub> converter check.
- 90.320 Carbon dioxide analyzer calibration.
- 90.321 NDIR analyzer calibration.
- 90.322 Calibration of other equipment.
- 90.323 Analyzer bench checks.
- 90.324 Analyzer leakage check.
- 90.325 Analyzer interference checks.
- 90.326 Pre- and post-test analyzer calibration.
- 90.327 Sampling system requirements.
- 90.328 Measurement equipment accuracy/calibration frequency table.
- 90.329 Catalyst thermal stress test.

APPENDIX A TO SUBPART D OF PART 90—TABLES

APPENDIX B TO SUBPART D OF PART 90—FIGURES